

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
STATE OF MONTANA

IN THE MATTER OF THE PROPOSED
DISCIPLINARY TREATMENT OF
UNITED STATES AUTO CLUB,
MOTORING DIVISION, INC.,
License No. 155038,

Respondent.

Case No. 2005-24

CONSENT AGREEMENT
AND FINAL ORDER

The State Auditor and Commissioner of Insurance of the state of Montana
(Commissioner) and the Insurance Department, pursuant to the authority of the Montana
Insurance Code, Mont. Code Ann. § 33-1-101, *et seq.*, hereby make the following fact assertions
and conclusions of law which justify and support the administrative settlement described herein:

FACT ASSERTIONS

1. Respondent United States Auto Club, Motoring Division, Inc. (USAC/MD) is a
motor service club company with an office located at 250 Carpenter Freeway, Dallas, Texas
75050. Respondent USAC/MD holds license #155038 issued by the Commissioner to operate a
motor service club in Montana. USAC/MD has been licensed since 1971.

2. Respondent USAC/MD has an arrangement with United Service Association for
Health Care, Inc., 1901 N. Highway 360, Grand Prairie, Texas 75050, (USA+) in which persons
who purchase a membership in USA+ also receive motor service club benefits from USAC/MD.

3. Since January 1, 2003, USA+ has sold approximately 154 memberships in
Montana which include the motor service club benefits provided by USAC/MD.

4. Since January 1, 2003, USA+ has used several business entities and
approximately 91 individuals to solicit and sell memberships in USA+ which include the motor
service club benefits provided by USAC/MD.

5. The motor service club contract provided by USAC/MD to USA+ members has
not been approved by the Commissioner and Insurance Department. The agents of USA+ selling
memberships, which include USAC/MD motor service club benefits, are not licensed by the

1 Commissioner and Insurance Department as motor service club agents.

2 6. USAC/MD contends that, at all times during its relationship with USA+, it
3 believed the motor service club program offered as a benefit to USA+ members was filed with
4 and approved by the Commissioner and that all applicable regulatory requirements had been
5 satisfied. As a result of the Department's investigation into the activities of USA+, USAC/MD
6 now understands that its beliefs may have been in error.

7 **CONCLUSIONS OF LAW**

8 1. The State Auditor is the Commissioner of Insurance pursuant to Mont. Code Ann.
9 § 2-15-1903.

10 2. The Montana Insurance Department (Department) is under the control and
11 supervision of the Commissioner of Insurance pursuant to Mont. Code Ann. §§ 2-15-1902 and
12 33-1-301.

13 3. The Commissioner of Insurance shall administer the Department to protect
14 insurance consumers. Mont. Code Ann. § 33-1-311.

15 4. Pursuant to Mont. Code Ann. § 61-12-302, motor service club agents must be
16 licensed by the Commissioner and Department prior to acting as such agents.

17 5. Motor service club contracts must be filed with and approved by the
18 Commissioner and Department prior to issuing the same in Montana. Mont. Code Ann. § 61-12-
19 308.

20 6. The Commissioner contends that, by using unlicensed agents of USA+ to sell a
21 USAC/MD motor service club product, which is included in USA+ memberships, USAC/MD is
22 in violation of Mont. Code Ann. § 61-12-302.

23 7. The Commissioner contends that, by issuing an unapproved motor service club
24 contract to members of USA+, USAC/MD is in violation of Mont. Code Ann. § 61-12-308.

25 8. Pursuant to Mont. Code Ann. § 61-12-315 and 33-1-317, the Insurance
26 Commissioner may impose an administrative fine of up to \$25,000.00 per each violation.

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AGREEMENT

The Department and Respondent USAC/MD hereby stipulate and agree to the following:

1. The Commissioner and Department have jurisdiction over the subject matter of the above-entitled proceeding.

2. Respondent acknowledges that it was advised of the right to be represented by legal counsel and if represented by legal counsel, that such legal representation was satisfactory.

3. Respondent acknowledges that its authorized representative signing this Consent Agreement and Final Order has read and understands each term of this Consent Agreement and Final Order. Respondent acknowledges that it enters into this Consent Agreement voluntarily, and without reservation. Respondent acknowledges that its authorized representative signing this Consent Agreement is not under the influence of alcohol or drugs (prescription or otherwise) and that he or she does not suffer from any emotional disturbance or mental disease or defect that would render him or her not competent to sign this Consent Agreement. Respondent further acknowledges that this Consent Agreement constitutes the entire agreement between the parties and that no other promises or agreements, either express or implied, have been made by the Department or by any member, officer, agent or representative of the Department to induce Respondent to enter into this Consent Agreement.

4. The Department contends as set forth in the preceding Fact Assertions and Conclusions of Law and Respondent neither admits nor denies the same. The Department and Respondent have elected to resolve these matters as follows:

(a) Effective upon signing this Agreement, Respondent USAC/MD will not provide motor service club benefits to new USA+ members;

(b) USAC/MD will cease providing motor service club benefits to current Montana members of USA+ enrolled in the motor service club program and will refund, within 30 days of the mailing of the notice of cancellation referred to below, any funds USAC/MD received on behalf of Montana USA+ members enrolled in the motor service club program within the past 12 months from the date of this Agreement. USAC/MD will send a written

1 notice of cancellation to current Montana USA+ members enrolled in the motor service club
2 program providing that the motor service club benefits will terminate 30 days from the date of
3 the written notice and that any funds USAC/MD received on behalf of Montana USA+ members
4 enrolled in the motor service club program within the past 12 months from the date of this
5 Agreement will be refunded. Within 10 days of signing this Agreement, USAC/MD will provide
6 a draft of the written cancellation notice for Department review and approval prior to issuing the
7 same. Within 15 days following Department approval of the draft notice, USAC/MD will send
8 the notice to USA+ members enrolled in the motor service club program and will provide a
9 complete mailing list to the Department of USA+ members in Montana who will be receiving the
10 notice and the amount of each member's refund;

11 (c) If Respondent USAC/MD wishes to offer and provide motor service club
12 benefits to Montana consumers which are included with membership in another entity or
13 organization, such as USA+, Respondent USAC/MD will first file and obtain the Commissioner
14 and Department's approval of the contract to be used and will verify that only properly licensed
15 agents will solicit and sell memberships in the other entity or organization;

16 (d) For violations of Mont. Code Ann. §§ 61-12-302, and 61-12-308, the
17 Department may impose a maximum fine of \$25,000.00 per each violation pursuant to Mont.
18 Code Ann. §§ 61-12-315 and 33-17-317. For all violations alleged in this Agreement,
19 Respondent USAC/MD will pay an administrative settlement of \$25,000.00, with all but
20 \$1,000.00 suspended, to the Department within 30 days following the signing of the Final Order
21 in this matter. Respondent USAC/MD agrees to pay the remaining \$24,000.00 of the
22 administrative settlement if, within the 12 months following the signing of the Final Order,
23 Respondent fails to comply with this Agreement and Final Order or fails to comply with the
24 Montana Insurance Code or Title 61, Chapter 12, Part 300 (motor service clubs), Montana Code
25 Annotated, or any administrative rules. The failure of Respondent to comply during this time
26 period will be determined in a subsequent legal (administrative, civil and/or criminal) proceeding
27 by the Commissioner, Department, and/or State of Montana which need not be concluded within
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1 12 months following the signing of the Final Order in this matter. The remaining \$24,000.00 of
2 Respondent's administrative settlement will be due within 30 days following any determination
3 of Respondent's failure to comply;

4 (e) The Department and Respondent agree that this Consent Agreement and
5 Final Order resolves the alleged violations set out herein;

6 (f) Respondent specifically and affirmatively waives a contested case hearing
7 and all rights to appeal under the Montana Administrative Procedure Act, and elects to resolve
8 this matter on the terms and conditions set forth herein;

9 (g) Respondent agrees that compliance with this Consent Agreement and Final
10 Order shall be a final compromise and settlement of the matters set forth herein;

11 (h) Respondent fully and forever releases and discharges the Commissioner,
12 Department, and all Department employees from any and all actions, claims, causes of action,
13 demands, or expenses for damages or injuries, whether asserted or unasserted, known or
14 unknown, foreseen or unforeseen, arising out of the factual allegations or conclusions in this
15 Consent Agreement; and

16 (i) The Department and Respondent agree that this Consent Agreement shall be
17 incorporated and made a part of the attached Final Order issued by the Commissioner herein.

18 5. Respondent further understands that, upon the signing of the Final Order by the
19 Commissioner or his representative, this Consent Agreement and Final Order will be an order of
20 the Commissioner and failure to comply with the same may constitute separate violations of the
21 Montana Insurance Code, pursuant to Mont. Code Ann. § 33-2-119 and/or other applicable
22 statutes or rules, and may result in subsequent legal action by the Department.

23 6. Respondent understands that this Consent Agreement is not effective until such
24 time as the following Final Order is signed.

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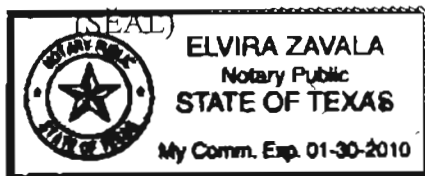
1 7. Respondent understands that this Consent Agreement and Final Order are public
2 records under Montana law and as such may not sealed or otherwise withheld from the public.
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4 UNITED STATES AUTO CLUB, MOTORING DIVISION, INC., RESPONDENT

5 By: Jane A. Vance
6 Printed Name: Jane A. Vance
7 Its: Chief Operating Officer

2/23/06
Date

8 Subscribed and Sworn to before me this 23 day of February, 2006.



Elvira Zavala
Notary Public for the State of Texas
Residing at Dallas, TX
My commission expires 1-30-10

13 ACCEPTED ON BEHALF OF THE INSURANCE DEPARTMENT:

14 Jennifer Massman
15 Jennifer Massman, Staff Attorney

2-24-2006
Date

1 FINAL ORDER

2 Pursuant to the authority vested by the Montana Insurance Code, Mont. Code Ann. § 33-
3 1-101, *et seq.*, and the statutes governing motor service clubs, Mont. Code Ann. § 61-12-301, *et*
4 *seq.*, and upon review of the forgoing Consent Agreement and good cause appearing therefor,

5 IT IS ORDERED that the foregoing Consent Agreement between the Insurance
6 Department and United States Auto Club, Motoring Division, Inc. is hereby adopted as if set
7 forth fully herein.

8 DATED this 24th day of February, 2006.

10 JOHN MORRISON
11 State Auditor and Commissioner of Insurance

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13 By: Alicia Pichette
14 Deputy Insurance Commissioner

CERTIFICATE OF SERVICE

I hereby certify that on the 24 day of February, 2006, I served a true and accurate copy of the foregoing Consent Agreement and Final Order upon the Respondent and Department, by mail, postage prepaid, or by hand-delivery at the following address:

Peter Funk
Attorney for Respondent
Keller, Reynolds, Drake, Johnson and Gillespie, P.C.
P.O. Box 598
Helena, MT 59624

Jennifer Massman
Staff Attorney
Insurance Department

Pamela West